

**2198 FAILURE TO COMPLY WITH SEX OFFENDER REGISTRATION REQUIREMENTS — § 301.45****Statutory Definition of the Crime**

Section 301.45 of the Wisconsin Statutes is violated by one who knowingly fails to comply with a requirement to provide information under that statute.

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant was a person who was required to provide information under section 301.45.

A person who (describe the applicable criterion set forth in subs. (1g) of § 301.45)<sup>1</sup> is required to provide information under section 301.45.

2. The defendant failed to provide information as required.

Section 301.45\_\_\_\_\_ provides that persons required to provide information under section 301.45 must (describe the requirement set forth in subs. (2)-(4) of § 301.45).<sup>2</sup>

3. The defendant knowingly failed to provide the required information.

This requires that the defendant knew that (he) (she) was required to provide the information.

### **Deciding About Knowledge**

You cannot look into a person's mind to find knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

### **Jury's Decision**

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

### **COMMENT**

Wis JI-Criminal 2198 was approved by the Committee in December 2004 and revised in 2012. This revision was approved by the Committee in June 2021; it updated the Comment.

This instruction provides a very general model for violations of § 301.45, Sex offender registration. The statute imposes a very detailed and complex set of requirements for persons who have been adjudicated for a sex offense. The key provisions are as follows:

- Those who are covered by the registration requirement are identified in sub. (1g) of § 301.45.
- The requirements for registration and providing information are set forth in subs. (2) to (4) of § 301.45.
- Subsection (6)(a) specifies criminal penalties for “whoever knowingly fails to comply with any requirement to provide information under subs. (2) to (4) . . .”
- Subsection (6)(ag) specifies criminal penalties for “whoever intentionally violates sub. (4r) . . .”
- Subsection (4r) restricts establishing or changing residence without complying with applicable requirements.

The instruction provides a model for violations based on sub. (6)(a): knowingly failing to comply with requirements in subs. (2) to (4). The basis for the defendant's being required to register should be described in element 1; the information that was not provided as required should be described in element 2.

2009 Wisconsin Act 131 [effective date: March 4, 2010] created § 301.45(2)(a)6m. to add email accounts, internet addresses for web sites, etc., to the information that must be provided by those required to register.

The sex offender registration law is not unconstitutional as applied to a defendant convicted of the non-sexual false imprisonment of a minor. False imprisonment in violation of § 940.30 is considered a “sex offense” under § 301.45(1d)(b) if the victim was a minor and the defendant was not the victim's parent.

Requiring registration in this type of case “is rationally related to a legitimate governmental interest.” State v. Smith, 2010 WI 16, ¶40, 323 Wis.2d 377, 780 N.W.2d 90.

In State v. Dinkins, 2012 WI 24, 339 Wis.2d 78, 810 N.W.2d 787, the conviction of a homeless sex offender for failing to provide the address at which he will be residing as required by § 301.45(6) was reversed. The court held:

. . . we conclude that a registrant cannot be convicted of violating Wis. Stat. § 301.45(6) for failing to report the address at which he will be residing when he is unable to provide this information. We determine that a registrant is unable to provide the required information when that information does not exist, despite the registrant's reasonable attempt to provide it. ¶5.

In reaching this conclusion, the court relied on the “unable to provide” language found in Wis. Stat. § 301.45(2)(d) which provides in relevant part:

A person subject to [the registration requirements] who is not under the supervision of the [DOC] or the [DHS] shall provide the information specified in par. (a) to the [DOC] in accordance with the rules under sub. (8). If the person is unable to provide an item of information specified in par. (a), the [DOC] may request assistance from a circuit court or the [DHS] in obtaining that item of information.

In State v. Savage, 2020 WI 93, 935 Wis.2d 1, 951 N.W.2d 838, the Wisconsin Supreme Court reexamined Dinkins and its application to homeless registrants under the supervision of the Department of Corrections. The court held that “Dinkins does not conclude that homeless sex offenders are exempt from registration requirements.” See id., ¶46. Instead, Dinkins merely answered the narrow question of whether a registrant, who is not under supervision, can be convicted under § 301.45(6) for failing to notify the Department of Corrections of the address at which they will be residing upon release from prison.

In contrast, registrants under the supervision of the Department of Corrections are subject to a different paragraph than the defendant in Dinkins. Specifically, the information requirements of such registrants are controlled by § 301.45(2)(b), which does not contain a provision for a person unable to provide information as provided in § 301.45(2)(d). Therefore, as the court in Savage provided, “Any hypothetical defenses formulated based upon the ‘unable to provide’ holding in Dinkins cannot be imputed to a case dealing with a defendant who is under DOC supervision pursuant to §301.45(2)(b).” See Savage, supra, 935 Wis.2d 1, ¶46.

In State v. Triebold, 2021 WI App 13, 396 Wis.2d 176, ¶13, 955 N.W.2d 415, the court held that the registrant’s failure to update the Wisconsin Department of Corrections of a change of address that occurred exclusively within the jurisdiction of Minnesota had “the consequence of depriving Wisconsin authorities of information concerning the location of his residence.” The court concluded that Wis. Stat expressly prohibits such a consequence. § 301.45.

The Triebold court also determined that double jeopardy principles did not preclude the registrant’s dual convictions in Minnesota and Wisconsin under Wis. Stat. § 939.71 or Blockburger v. United States, 284 U.S. 299, 304 (1932) because the two offenses required proof of different facts. Triebold, supra, at ¶24-25.

In State v. Freland, 2011 WI App 80, 344 Wis.2d 722, 800 N.W.2d 18, the court of appeals ruled that the defendant was entitled to withdraw his plea of guilty to a felony charge of failing to provide sex offender information as required by § 301.45(2)(e). The plea was not knowing, voluntary, or intelligent because he

Wisconsin Court System, 2021

was not aware that the out-of-state conviction on which the registration requirement was based was eligible to be treated as a misdemeanor under § 301.45(6).

1. Subsection (1g) lists the categories of persons who are subject to the requirements of § 301.45. The applicable category should be used in the blank in element 1. For example, “A person who was convicted for a sex offense after December 25, 1993, is required to provide information under section 301.45.” Offenses that are “sex offenses” are listed in § 301.45(1d)(b).

2. Specify the subsection of § 301.45 that is involved in the case and describe the requirement that was allegedly violated.